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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/438,759	11/11/1999	GISELA MEIER	2368/098	9841

7590 12/04/2001

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EXAMINER

LAM, ANN Y

ART UNIT	PAPER NUMBER
3763	

DATE MAILED: 12/04/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

**Offic Action Summary**

	Applicati n N .	Applicant(s)
	09/438,759	MEIER ET AL.
Examiner	Art Unit	
Ann Y. Lam	3763	

-- Th MAILING DATE of this communication appears on th cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 11 November 1999.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

For example, claim 1 lacks a transitional phrase such as "comprising of", "consisting of", or "consisting essentially of", or their equivalents. For examination purposes only, Examiner reads all of the pending claims as if they recite an open transitional phrase, equivalent to the transitional phrase "comprising of".

Also, claim 2 recites the limitation, "the electrical contacting connection", in line 2. There is insufficient antecedent basis for this limitation in the claim.

Also, claim 4 recites the limitation, "the ring gap", in line 4. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaer, 5,782,760. Schaer discloses an electrically conductive cannula tube (11 and 51), see Figure 13, with a distal tip (53), with an exit opening (34), with a body part at the proximal end of the cannula, with an electrically insulating outer covering of the cannula tube, which extends from the body part out to the tip and which leaves the tip exposed at least in its distal end area, see column 3, lines 27-37, and with a connector (22) electrically connected to the cannula in the area of the body part, wherein the body part includes an inlet opening axially aligned with the cannula tube, see Figure 1, and wherein a conductor (16) runs through the casing of the body part to the circumference of the cannula tube.

As to claim 2, the electrical contacting connection includes a connection junction pressed against the circumference of the cannula tube, to which a wire of a multi-strand connector (22) is soldered, see column 5, lines 14-18.

As to claim 3, the wire lies axially parallel against the cannula tube and the multi-strand conductor is directed radially through the body part towards the outside.

As to claim 4, a ring gap filled with plastic is disclosed at column 5, lines 16-18, and column 7, lines 57-65.

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As to claim 5, the inlet opening exhibits a decreasing diameter inlet funnel, see proximal end of cannula in Figure 1.

As to claim 6, a luer-lock connection is disclosed, see proximal end of cannula in Figure 1.

As to claim 8, the distal tip is a facet cut, see distal tip of cannula in Figure 13.

As to claim 9, the facet cut is angled at an angle of approximately 45 degrees to the axis of the cannula tube, see distal tip of cannula in Figure 13.

As to claim 10, the distal tip is formed as a closed conically arched tip with an exit opening, see distal tip of cannula in Figure 13.

As to claim 11, the inside of the distal tip has a ramp, see distal tip of cannula in Figure 13, near reference number 53.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schaer, 5,782,760. Schaer discloses the invention substantially as claimed, see above. However, Schaer does not disclose that the exposed end area of the distal tip of the cannula has a length of maximally 1mm.

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Schaer however does disclose that a plastic jacket may be disposed about the distal shaft section and holes may be made in the jacket to expose small portions of the underlying electrodes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide holes as taught by Schaer having a maximum of 1 mm, as a particular size suitable for a medical treatment of a patient.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Y. Lam whose telephone number is (703) 306-5560. The examiner can normally be reached on T-F 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703)308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

A.L.  
November 27, 2001

ANHTUAN T. NGUYEN  
PRIMARY EXAMINER  
11/29/01